

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**PERALTA,**

**Plaintiff,**

**-against-**

**VICTOR'S CAFÉ 52ND STREET ET AL.,**

**Defendants.**

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#:  
DATE FILED: 5/11/2023

**22-cv-08915 (ALC)**

**ORDER OF DISMISSAL**

**ANDREW L. CARTER, United States District Judge:**

Plaintiff commenced this action against Defendants Victor's Cafe 52nd Street, Inc., Sonia Zaldivar, and Monica Zaldivar on October 19, 2022. ECF No. 1. Plaintiff alleged violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. ("FLSA") and the New York Labor Law ("NYLL"). On November 10, 2022, Plaintiff filed a notice of voluntary dismissal pursuant to Rule 41(A)(1)(A)(i) indicating he was dismissing his FLSA and NYLL claims against Defendants without prejudice and that he intends to pursue arbitration. ECF No. 13. Neither party moved to compel arbitration, nor did they ask the Court to keep the case open pending arbitration. Plaintiff clarified in a follow up letter that the parties had not settled and that Plaintiff intends to pursue his claims in arbitration. ECF No. 14. Therefore, no FLSA settlement exists. *See Samake v. Thunder Lube, Inc.*, 24 F.4th 804, 811 (2d Cir. 2022) ("Had a FLSA settlement existed, the district court would then engage in a *Cheeks* fairness review, but in the absence of a settlement, the notice of dismissal [pursuant to Rule 41(a)(1)(A)(i)] should be so-ordered.").

Accordingly, this action is hereby **DISMISSED WITHOUT PREJUDICE**. The Clerk of Court is respectfully directed to terminate this case.

**SO ORDERED.**

**Dated: May 11, 2023**  
**New York, New York**

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written in a cursive style.

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**ANDREW L. CARTER, JR.**  
**United States District Judge**